IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 18TH JUNE 2007 / 28TH JYAISHTA 1929

WP(C).No. 23843 of 2005(L)

I.A.3200, 3201 & 3202/05 IN OS.132/2001 of PRL.SUB COURT,THRISSUR

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PETITIONER:

P.K.RAVI, S/O.KANDUNNY P.V.,
PARANGODATH HOUSE, KODAKARA (PO),
THRISSUR.

BY ADV. SRI.T.K.MARTHANDAN UNNITHAN
SRI.V.JAYAKUMAR
SRI.K.P.UNNIKRISHNAN

RESPONDENTS:

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1. U.A.JOSEPH, S/O.OOKKAN ANTONY,
VELUTHOOR (PO), VELUTHOOR VILLAGE,
TRICHUR TALUK, TRICHUR DISTRICT.

2. P.V.BHASKARAN, S/O.PANAMUKKU VELAYUDHAN,
VELUTHOOR (PO), VELUTHOOR VILLAGE,
THRISSUR TALUK, THRISSUR DISTRICT.

BY ADV.SRI.A.M.SHAFFIQUE
SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR
SMT.PRIYA MAHESH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.23843/05

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF POWER OF ATTORNEY DT.19.2.98

EXT.P2 – TRUE COPY OF JOINT WRITTEN STATEMENT DT.23.8.03 IN O.S.132/01 SUBMITTED BY RESPONDENTS.

EXT.P3 – TRUE COPY OF AMENDMENT APPLICATION DT. 2.7.05 AS I.A.3200/05 IN O.S.132/01 OF SUB COURT, TRICHUR FILED BY RESPONDENTS.

EXT.P4 – TRUE COPY OF ORDER DT.23.7.05 OF SUB COURT IN I.A.3200/05

EXT.P5 – TRUE COPY OF ORDER DT.23.7.05 IN I.A.3201 AND 3202/05 IN O.S.132/01 OF SUB COURT, TRICHUR..

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.23843 OF 2005

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DATED THIS THE 18TH JUNE, 2007

J U D G M E N T

Ext.P4 order by which the court below allowed incorporation of certain drastic amendments to the written statement and Ext.P5 order by which the court below allowed an application filed by the defendants for adducing further evidence are under challenge. Mr.T.K.M.Unnithan, learned counsel for the petitioner submitted that in Ext.P4 itself the court below has found that the amendment application is hopelessly belated and that the objective in filing the application is to protract the proceedings of the suit. Nevertheless, on what is described by the court below as interest of justice and the necessity to forbear from shutting out evidence, the court below allowed the amendment application. Like submissions were made by the learned counsel regarding Ext.P5 also. My attention was drawn by Mr.Unnithan to the judgment of this Court in **Jayakumaran Nair v. Vertex Securities Ltd.** (2005 (4) KLT Sh.Notes Case 33, p.26) and that of the Supreme Court in **Baldev Singh v. Manohar Singh** (2006 (3) KLT 953).

2. Notwithstanding the strenuous and persuasive submissions of Mr.Unnithan, I do not think that this Court will be justified in setting aside Exts.P4 and P5 orders. The main thrust in the submissions of

Mr.Unnithan was that if these contentions were raised earlier, perhaps the plaintiff-petitioner would not have remitted the full court-fee of Rs.42,000/-. Considering the submissions and the finding of the court below that the objective is to delay the proceedings and that there is hopeless delay, I am of the view that the cost of Rs.2500/- imposed by the court below for allowing the amendment application and the cost of Rs.1000/- imposed similarly for allowing I.A.3201 and 3202 of 2005 were on a very low side. It would have been proper if much higher amounts had been imposed by way of costs.

Accordingly, in modification of Ext.P4, it is ordered that I.A.3200 of 2005 will stand allowed only if the respondents pay a sum of Rs.10,000/- instead of Rs.2500/- to the plaintiff either directly or through his advocate in this court by way of costs within six weeks from today. Similarly, Ext.P5 will also stand modified to the extent of enhancing the amount of cost ordered by the court below to Rs.5000/- (instead of Rs.1000/-). The amount of Rs.5000/- which is imposed as a condition for allowing I.A.3201 and 3202 of 2005 shall be remitted by the respondents within the aforesaid time-limit in the aforesaid manner itself. Subject to the above modifications, the challenge against Exts.P4 and P5 is repelled. It is needless to mention that at

the time of disposing of the suit and passing orders regarding costs under Section 35 C.P.C., the court below will also take into account the circumstances under which the petitioner became obliged to remit the full court fee payable on the plaint and issue appropriate directions regarding costs.

The Writ Petition is disposed of as above.

(PIUS C.KURIAKOSE, JUDGE)

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